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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,722	11/12/2003	Ryan Waters	P-7947(CIP)	7263

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EXAMINER	
ALAVI, ALI	

ART UNIT	PAPER NUMBER
2875	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No.	Applicant(s)	
	10/706,722	WATERS, RYAN	
	Examiner	Art Unit	
	Ali Alavi	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *29* is/are allowed.

6)☒ Claim(s) *1-10,14 and 28* is/are rejected.

7)☒ Claim(s) *11-13 and 15-27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/03 & 5/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claims 14-29 are objected to because of the following informalities: In claim 14, line 3, the letter "E" of word "Emitting" should be in lower case. There are more typical errors appear in claims 14-29. Appropriate correction is required.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-5, 14, 28 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-5, 11, and 19 of copending Application No. 10/374,949. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 1-5, 14 and 28 of this application conflict with claims 1-5, 11 and 19 of Application No. 10/374,949. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6 to 8 are provisionally rejected under the judicially created dodrine of obviousness-type double patenting as being unpatentable over claims 5 to 7 of opending Application No. 10/706,722. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 5 to 7 of application (722 contain all the elements of the claims of the instant application. The instant application claims are broader and said to dominate the more narrow copending application claims which contain the additional elements. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 9 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/706,722 in view of Maas et al. (prior art previously cited).

Claims 1 and 2 of application (722 disclose the invention substantially as claimed with the exception of having the red LED light assembly at a 45 degrees angle with the dichroic filter.

Maas teaches a red LED light assembly (22, 22') disposed at a 45 degrees angle with a dichroic filter (27) for transmitting the red light.

It would have been obvious to one skilled in the art to arrange the red LED light assembly of claims 1 and 2 of application '722 at a 45 degrees angle with the dichroic filter, as shown by Maas, for transmitting the red light.

This is a provisional obviousness-type double patenting rejection.

Claim 10 is provisionally rejected under the judicially created doctrine of obviousness- type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/706,722 in view of Kurandt.

Claims I and 2 of application (722 disclose the invention substantially as claimed with the exception of having the blue LED light assembly at a 45 degrees angle with the dichroic filter. Kurandt teaches a blue LED light (6) disposed at a 45 degrees angle with a dichroic filter (9) for deflecting the blue light.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harmon (US Pat. 4,488,207) in view of Koo (US Pat No 4,419,716).

Harmon discloses a light apparatus for producing a collinear beam of white or colored light comprising: a housing (1) at least three sets light assemblies (4, 5, 6) contained within said housing, wherein each of said sets of light assemblies is comprised of a plurality of lights, said lights being arranged in a geometric pattern (fig. 2), and wherein said lights contained within each of said sets of light assemblies are of the same color, said lights being of different colors between said sets of light assemblies, a dichroic bandpass filter (22) located between said sets of light assemblies, a dichroic notch filter (23) located between said sets of light assemblies intersecting said dichroic bandpass filter (22) a power driver (inherent) connected to each of said sets of LED light assemblies; and a microcontroller connected to said power driver. However, Harmon fails to teach that each of the light assemblies comprised of a plurality of same color LEDs. It should be noted that the LED(s) is/are well known in the art and can be interchangeable with incandescent, halogen, and fluorescent lamps because of their efficiency and long operating life. It would have been obvious to an ordinary skill in the art to to use different color sets of LED in place of the light sources used by the Harmon in order to increase the longevity of the light sources and reduce the power consumption. As for the microcontroller it is old and well known to provide a microcontroller in the system of Harmon to control the illumination effectively.

Harmon discloses the claimed invention as described above except for the housing having a plurality of heat sinks to dissipate heat from the lighting apparatus.

Koo teaches a light apparatus having a housing (12) including a plurality of heat sinks on the perimeter of the housing to dissipate heat from the lighting apparatus.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to provide a cooling system such as heat sinks in order to reduce heat generated by the light source and to dissipate heat from the light apparatus as taught by Koo.

Allowable Subject Matter

Claims 11-13, 15-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 29 is allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mass et al (US Pat. No 6,402,347) discloses a light generator having a housing including a plurality of heat sinks.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Ali Alavi whose telephone number is (571) 272-2365. The examiner can normally be reached between 7:00 A.M. to 5:30 P.M. Tuesday to Friday. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Sandy O'Shea can be reached at (571) 272-2378 or you may fax your inquiry to the **Central Fax** at (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ali Alavi
Patent Examiner
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